IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 447 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL KANTILAL BOTHIDAS
Versus
PATEL VISABHAI TRIBHOVANDAS

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Appearance :
MS SONAL D VYAS for the applicant.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/03/2006

ORAL JUDGMENT

The petitioner is a judgment debtor against whom

the decree is passed in Regular Civil Suit No. 45 of 1993.

The respondent herein instituted the said suit for a declaration and injunction in connection with the easementary right and right of way through the agricultural land bearing block No.348 at village Ambaliyasan. The trial Court decreed the suit. The trial Court held that the plaintiff has got right of way through block No. 348 of the defendant, to be precise, through the south-east corner of the land. The trial court also held that the plaintiff has right to pass through the corner of block No. 348. The trial Court restrained the defendant from preventing the plaintiff to pass through the corner of block No. 348. The trial Court also held that the plaintiff shall not damage the crop of the defendant while using the strip of land of block No. 348 as a right of way.

The original plaintiff-decree holder thereafter filed execution petition before the executing Court and also prayed for putting barbed wire fencing. The executing Court, vide its orders dated 4.4.00 and 5.4.00 in the execution petition, recorded the consent of the judgment debtor by which the judgment debtor agreed to permit the decree holder to put a wire fencing in the disputed land at his costs. The executing court therefore permitted the decree holder to put a wire fencing at the disputed land. Against the aforesaid order by which the decree holder is

granted permission to put wire fencing at the corner of block No. 348, the judgment debtor has filed this Revision.

Heard learned advocate Ms. Sonal D Vyas. She has vehemently submitted that the executing court as gone beyond the decree as there was no such decree by which the decree holder was permitted to put up a barbed wire fence at the corner of survey No. 348.

In my view, there is no substance in this Revision which is filed under section 115 of the Code of Civil Procedure. It is required to be noted that as per the original decree, the decree holder was permitted to use a strip of land which is at the corner of survey No. 348 of the judgment debtor without damaging the crop of the judgment debtor. Before the executing court, a consent was given by the judgment debtor [present petitioner] to the effect that the judgment debtor has no objection if the decree holder is permitted to put up a wire fencing at his own costs. On the basis of the said express consent, the executing court has permitted to put up wire fencing. This concession seems to have been given with a view to see that the crop of the judgment debtor is not damaged by using the strip of land.

In any case, since the order in question is a consent order by which the decree holder is permitted to put up wire fencing at his own costs, it is now

not open for the judgment debtor to challenge the said order by way of revision. Even the said consent seems to have been given in order to see that the crop of the defendant-judgment debtor is not damaged if such right of easement is permitted to the decree holder as per the decree.

Considering the aforesaid aspect of the matter, I do not find any substance in the Revision as it cannot be said that the order of the executing court suffers from any error of jurisdiction. Hence dismissed. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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